

CASUAL LABOR

Casual labor is a common term used in the employer community to describe workers performing a variety of services, usually on a temporary or part-time basis. Often these workers are hired for just an hour, a day, or a week. Workers hired for an hour, a day, a week, or for part-time services are typically common law employees. There is no provision in the law that excludes a worker from employment solely because he or she works less than full-time. The following types of workers have been referred to as casual laborers:

- Part-time help
- Day laborer
- Student
- A worker on probation
- A retiree collecting social security benefits
- A worker without a social security account number
- Temporary help
- Outside laborer
- Alien
- A worker in training

Who Is an Employer?

Under the California Unemployment Insurance Code, an *employing unit* is any individual or type of organization that has in its employ one or more individuals performing services for it. An employing unit becomes an *employer* upon paying wages in excess of \$100 in a calendar quarter to one or more employees. *Wages* consist of remuneration for services performed, including cash payments, commissions, bonuses, and the reasonable cash value of nonmonetary payments for services.

Once you become an employer, you must complete a registration form, DE 1, within 15 days. Employers are responsible for reporting wages paid to their employees and paying Unemployment Insurance (UI) Taxes and Employment Training Tax (ETT) on those wages, as well as withholding and paying State Disability Insurance (SDI)* Taxes and Personal Income Tax (PIT) due on wages paid to workers.

Who Is an Employee?

California courts have established and consistently upheld the concept of *presumption of employment*: the fact that an individual is performing work or labor for another (the principal) is considered evidence of employment and such worker is presumed to be an employee in the absence of evidence to the contrary.

A worker may be an employee based on the provisions of a particular statute or under the usual common law rules applicable in determining an employer-employee relationship. Under common law, the most important factor to be considered when determining whether a worker is an employee or independent contractor is the right of control over the worker. If you, as the principal, can control the way in which the work will be done, then in most situations the worker is your employee and there is a common law employer-employee relationship. Other factors to be considered in evaluating the relationship and the degree of control over the worker include, but are not limited to:

- 1) Whether or not the one performing the services is engaged in a separately established occupation or business.

- 2) The kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of a principal without supervision.
- 3) The skill required in performing the services and accomplishing the desired result.
- 4) Whether the principal or the person providing the services supplies the instrumentalities, tools, and the place of work for the person doing the work.
- 5) The length of time for which the services are performed to determine whether the performance is an isolated event or continuous in nature.
- 6) The method of payment, whether by the time, a piece rate, or by the job.
- 7) Whether or not the work is part of the regular business of the principal, or whether the work is not within the regular business of the principal.
- 8) Whether or not the parties believe they are creating the relationship of employer and employee.
- 9) The extent of actual control exercised by the principal over the manner and means of performing the services.
- 10) Whether the principal is or is not engaged in a business enterprise or whether the services being performed are for the benefit or convenience of the principal as an individual.

Another consideration relative to employment is whether or not the worker can make business decisions that would enable him or her to earn a profit or incur a financial loss. Investment of the worker's time is not sufficient to show a risk of loss.

The numbered factors above are evidence of the right to control. These factors are described more fully in Section 4304-1 of Title 22, California Code of Regulations. A determination of whether an individual is an employee will depend upon a grouping of factors that are significant in relation to the service being performed, rather than depending on a single controlling factor.

The employee performing casual labor services may be paid based on piece rate or by the job, as well as by hour, salary, or sales. The means of pay may include, but are not limited to, cash, check, meals, lodging, products or services, and the reasonable cash value of all remuneration in any medium other than cash. However, wages does not include payment in any medium other than cash to an employee for service not in the course of the employer's trade or business, except for domestic services in a private home or in a local college club or local chapter of a college fraternity or sorority.

* Includes Paid Family Leave (PFL) beginning January 1, 2004.

The belief of the parties is considered in determining the relationship, but the actual details of the relationship are the important factors. A written contract stating that the worker is an independent contractor will not change the relationship if you are actually the employer. You will still be liable for payroll taxes, including the amount you should have withheld from the worker's wages.

When Would the Services of an Employee Performed on a Temporary or Part-Time Basis (and Therefore Sometimes Referred to as *Casual Labor*) Be Excluded from Employment?

1. Any services **not in the course of the employing unit's trade or business** performed in any calendar quarter would be excluded UNLESS:

- The remuneration received for the services is \$50 or more

AND

- The services (which are not in the course of the employing unit's trade or business) are performed by the individual on each of 24 days during that quarter or the preceding calendar quarter.

For example, an individual worked 15 days and was paid \$150 in the first quarter of 2002. (Not subject as time factor was not met.) This same individual worked 26 days and was paid \$400 in the second quarter of 2002. (Subject as time and monetary requirements were met.) This individual then worked 5 days and was paid \$65 in the third quarter of 2000. (Subject as time requirement was met in preceding quarter and monetary requirement was met in the third quarter of 2002.)

2. Services performed by an employee that are **in the course of the employing unit's trade or business** would be considered employment regardless of the amount of remuneration received or the length of the services. However, services performed in any calendar quarter for less than \$50 for any organization that is exempt from federal income taxes, such as nonprofit organizations or farmer cooperative organizations as specified in the Internal Revenue Code, would be excluded.

Any services performed in the course of the employer's trade or business are presumed to be employment unless found to be an independent contractor under common law.

Other Examples

The California Unemployment Insurance Appeals Board (CUIAB) has previously considered the status of workers performing casual labor services. The following are cases where the CUIAB has held that individuals performing services on a part-time, as-needed basis (and therefore sometimes referred to as casual labor), are employees and not independent contractors.

- (1) An electrical contracting business engaged the services of helpers to perform some of the installation tasks, such as drilling holes and pulling wires on an as-needed basis. The workers were not considered to be highly skilled in the installation of electrical wiring and were called "casual laborers" by the business. They performed their services under the following circumstances:

- The workers' amount of pay was based on an hourly rate.

- Payment for services was not contingent on the business collecting for services performed.
- The workers did not have contractor's licenses or business cards.
- The workers performed their services when available and on an as-needed basis.

The above factors provided evidence of the right of direction and control by the business and support the finding that their workers were common law employees (refer to the CUIAB Tax Decision T-85-230).

- (2) A law firm engaged the services of clerks, filing clerks, temporary secretaries, legal secretaries, investigators, attorneys, and law clerks on a part-time and as-needed basis under the following circumstances:

- The workers were allowed to decide when to report to work and the amount of time allocated to perform their services.
- The workers were given job assignments by the law firm.
- All of the work performed was an integral part of the business.
- The workers could be terminated at will without incurring liability to either the worker or the law firm.
- The workers required little, if any, direct supervision.
- Majority of the services were performed at the law firm.
- Pay was based on either hourly or by-the-job basis.
- None of the workers had their own businesses or business licenses.

The above workers were determined to be employees of the law firm. The workers' services were an integral part of the law firm's business and were similar to services performed by acknowledged employees. The factors provided evidence of the right of direction and control by the business and support the finding that their workers were common law employees (refer to the CUIAB Tax Decision T-88-33).

Additional Information

If you have questions regarding the employment status of casual laborers, you may visit the local Employment Tax Office listed in the California Employer's Guide (DE 44) or on our Web site at www.edd.ca.gov/taxloc.htm#taxloc. You may also call us toll-free at 1-888-745-3886.

Speech and hearing impaired customers can contact us at 1-800-547-9565.

Equal Opportunity Employer/Program. Auxiliary services and assistance available to persons with disabilities.